

TREASON.

GEORGE SMITH—Dear and extended Sir:

Your feeling delineation of the beauty and blessedness of mercy made me almost sink in the impenetrable depths of the judgment in the tide of sentiment. It was easy, in listening to you, to forget that this was merely a side issue—the negation of the main question. Is there a right to punish? I have been entirely persuaded. The objection of Mr. Train to the British publicists, on the ground of their nationality, is of course absurd, and calculated for effect only with such minds as take *The New-York Herald* for a guide. But I object to their citation, because all their precedents and arguments necessarily refer to such governments as existed in Vattel's time or previously—governments of the few over the many. I go further, than Vattel, and declare that under all circumstances treason against a monarchial or aristocratic government is impossible; for all such governments are themselves based on a betrayal of and fraud upon the people's birthrights, and treason against treason is a contradiction in terms. With democracies, however, the case is entirely altered. The majority governs, and if a minority wish to separate from the same they may do so, but in a lawful and orderly manner. But to do so by fraud and force at once, without having attempted the legal method, clearly constitutes treason, whatever dimensions the act may assume. In a government by force, the people have no redress for grievances except rebellion. Hence, under such a Government, rebellion can never, morally, be treason; for treason is a crime, while rebellion for liberty is a just act. Under a Government by consent, the people have or can procure means of redressing all grievances legally. Hence, there can never be a justification for violence in a democratic republic, while pacific measures have been neglected.

This radical difference between a rebellion against a monarchy, and a rebellion against a republic, also destroys all parallelism between the examples you have cited of Poland, Hungary, &c., and our case.

My father was an arch-rebel in his native land in 1846—a traitor—never! I am proud of his deeds, while I shun the touch of a plotter against our Government, as I do the pestilence! Would you defile your pure hand by grasping that of a traitor? Would you not, on the contrary, delight to salute a Garibaldi?

Secondly, our Government *has* no right to declare this Nation disserved into "two independent parts," or to formally acknowledge such servitude as you say it has done. If circumstances compelled the Government to act in practical details as if the Nation were severed, does that make it so? No power, nor justly did the Nation, except (1) the will of the Nation itself, expressed in Convention, or (2) the will of God, expressed in irresistible events. The will of the Nation has not been that way, you know. Events have not dissolved it, as you say. You may say it was *temporarily* dissolved by events. Granting this for argument sake, was not the crime of Davis & Co. committed *before* the dissolution? (In fact, their crime consists in bringing about illegally such events as led to that dissolution, hence their crime *must* have been prior.) Can the subsequent accomplishment of the separation possibly justify them? Even if the Nation had been admitted to be divided, as you say, by our Government, are not the acts which caused such division and which extorted from us such admission, still criminal?

Again, if you admit that at any time the Confederacy formed *de jure* a nation distinct from ours, why not have acknowledged the fact at once formally, granted the Rebels their "let alone," which was "all they asked," and stopped a most unrighteous war of subjugation? If we were, as you seem to say, two nations by right, the war on our part was an aggression, and we were the criminals. If the separation, however, existed only in fact, and not by right, how can we have exercised a prospective and retrospective effect in changing the moral and legal status of its incidents? *Can a wrong, by merely holding away a long time and over a wide country, become right?*

It is easy to prove that the Rebels, by their crime, lost their Constitutional rights; but how a state of warfare, by them illegally commenced, could ever give *any* extra-constitutional rights and privileges, such as immunity from punishment, is incomprehensible.

These are the two main points: 1. All unnecessary violence against a popular government is treason. 2. Treason cannot be justified by its extent or success. A supplementary point to the last, but irrelevant to the main question, is: Treason against a government of a privileged class is impossible.

There are other minor points, which time will not now allow me to discuss; but the preceding are sufficient to show that the guilt of our Southern Rebels has been logical; for, once admitting that treason is a crime, nothing further can be urged in its favor which would not also apply to other crimes, which you must unqualifiedly condemn.

Whether, after acknowledging their guilt and our subsequent right to punish them, mercy shall step in in their behalf or not, is quite another question, the merits of which need not now be discussed.

Victimhood, of all faults, I disclaim—equally so the Old Testament idea of justice, that guilt must be atoned for. If the Rebels shall be punished for treason, I claim such punishment on the only ground on which punishment can justly be based—the *prevention of future crimes*. All chastisement should have this aim, and no other. If you can show that this aim will be better served by letting our traitors go unpunished than by an opposite course, I shall unite with you in calling for mercy.

But the proposition that we have no lawful right to punish is far from me, for ever!

With very deep respect, your friend,
New-York, June 9, 1865. GUSTAVUS MULLER.

Punishment of Treason.

To the Editor of The N. Y. Tribune.

Sir: All Governments rest for support upon superior physical and moral force. Whenever that moral and physical support gives way, or is presumably transferred, attempts at revolution, if they succeed, are proved by that fact alone to have been justified. But this decision cannot be reached except by a trial of strength. Hence the obligation of every subaltern Government, in view of its own presumed right of existence to defend itself by summarily punishing as traitors all those who are proved to have secretly or openly conspired for its destruction.

But the right of self-defense by the prompt punishment of its assassins as traitors, ceases the moment the assassinating party becomes so numerous, organized and established as to give it the character of a Government, with any chance of ultimate success against the ruling power. As soon as this condition of things exists between the contending parties, the claim of the governing party to treat the rebels as traitors is no longer justifiable. At that moment the rules and the rights of war belong alike to each of the contending parties.

The United States Government had a perfect right to punish as traitors those individuals who were engaged in initiating the Rebellion. Jefferson Davis was one of them, and should have been arrested with his associates, tried and punished for treason, at the time. Had this been done, no war could have ensued.

But when the Rebellion assumed the shape of an organized government, with its armies, its navy, its financial system, and its civil polity, freed from the presence of any despotic United States authority, technical treason against the United States Government ceased, and the rights of legitimate war between the parties were in full force and so continued until the decision of the *ultima ratio regem*, the power of the sword, could be reached by the definitive triumph of one or the other of the parties. The rights and duties of regular belligerents attached to the Southern Rebellion when its seat of government became established at Richmond.

Since that period the laws of war have been applicable to the contest, until the final defeat and surrender of the chiefs and armies of the Rebellion.

Neither army or civil acts are amenable to the civil law, but acts done by them since the installation of the Rebel Government.

But they are amenable to the military law, and can

still be tried and put to death for a murderous violation of the recognized humane rules which attach to the prosecution of civilized warfare. He and his associates can be brought to the gibbet by military courts, as participants before the fact, in the summary and incendiary raids on our Northern frontier and large towns from Canada. These are not crimes of the deepest dye. Here is legitimate work for summary military justice. The same parties can be brought to justice by the same forms of trial for the murderous neglect and starvation of our prisoners in their hands.

But the idea of bringing 8,000,000 of people, organized as a Government and making war as such, to trial for treason, in their own person or in the person of their chosen chief, is revolting to the law, as recognized by all civilized nations, as well as the moral sense of mankind. The nation should not be disgraced forever by such a spectacle as that, whether followed by punishment or pardon.

Let a comprehensive amnesty cover the political crime of a vain and unjustifiable, though desperate, attempt to revolutionize a universally prosperous and happy country, excepting only such dangerous persons for banishment from our territory for life, or a term of years, as a proper regard for the public safety may dictate. Public safety, not vengeance, should be the guide of governmental action in the premises.

Moral criminality cannot be legally made to attach to a rebellion of 8,000,000 of people organized under a popular form of government and carrying on a war of doubtful result through a period of four years duration.

N. Y.

South Carolina—Reconstruction.

The Hon. WILLIAM Aiken, Ex-Gov. South Carolina.

MY DEAR SIR: My personal acquaintance with you from boyhood, and proximity of our plantations for several years, have given me the opportunity of knowing your many good qualities as a neighbor, master and friend. Your qualities as a statesman need no comment, while your record is so able to bear your testimony. Of your staunch sentiments against Secession, and your unshaken faith in the Union, and its final triumph over revolution, no one knows better than myself, who have so often had the honor of listening to your arguments. I take it as a dispensation of Providence that a good and true man like yourself is left around whom we, who have erred, may now rally, and hail you as our chief. I pray you, sir, as a Christian and a patriot, not to flinch from the task; your services were never more needed by your native State for her salvation than to-day; and I have every confidence that your kindly nature and staunch patriotism will not permit you to refuse to bear her burden.

What I am about to utter, I grate harshly upon certain ears; but from what my ears have heard and my eyes have seen, they who have knocked about in camps for four years, and have pondered deeply on the causes, effects and facts of our late awful war, have arrived at conclusions somewhat like my own.

The political energies of our State appear to be completely paralyzed. Is not this condition of public mind fraught with danger? Is it not possible that, under the circumstances, an element, unfriendly to her true interest, may take advantage of this state of things and ride into power to her ultimate disadvantage? How keenly alive I have been to this fact for some time past; my frequent conversations with you will attest; and I think that some one of energy and mind should strike out "a new line" as it were, for our people to commence thinking and acting upon. Must we sit down forever, trembling under the glitter of bayonets, in a country in which there is no longer war? Or will the people arise and say, "Father, we have erred, and, in thy sight, are no more worthy to be called thy sons; make us one of thy hired servants." And, as the father killed the fattest calf, so may we, also, hope that our political father will deem that "there is more joy to be made over one sinner that repenteth than over ninety-nine that need no repentance." Let us arise and ask for bread, trusting all things, hoping all things, believing that he will not give us a stone.

It strikes me that the sooner we go to work and repair our shattered bark, the better it will be for us as patriots, men, and good citizens.

The question naturally arises, must we invoke again to our aid our former prominent men? This is already answered by the action of the President. He naturally thinks, doubtless, that we cannot afford to trust our affairs to their hands again—they have been tried and found wanting, and must be content to retire upon their former honors, and give place to younger and wiser men. The revolution, which we have passed through, has changed the face of everything, and men, incompetent to the past, cannot be competent to the present and future. The ship of State was wrecked by unskillful navigators, a wreck which we have passed through, and we are taken to the cutter; and where are we to-day—each one striking out for himself, for bare life, upon the sea of desolation. Men who could sit in "secret session," for four years, insulting our intelligence with their secret sessions, could not be competent to the future. 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